

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 16, 2020

TIME: 1:00 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Heider, Vice Chairman Brackett, Senators Mortimer, Patrick, Guthrie, Stennett, and Jordan

ABSENT/ EXCUSED: Senators Bair and Johnson

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Heider** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Chairman Heider** moved to approve the Minutes of March 9, 2020. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Brackett moved to approve the Minutes of March 11, 2020. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

H 615 Relating to water; to provide that a party asserting that a water right has been forfeited has the burden of providing convincing evidence; and that certain water rights shall not be lost or forfeited for nonuse; and to provide for third-party claims of right.

Paul Arrington, Executive Director and General Counsel, Idaho Water Users Association, spoke on behalf of water delivery entities. He described that a water right is a real property right and as such courts are hesitant to declare a water right forfeited. Courts have required a showing of clear and convincing evidence of nonuse before a water right can be deemed forfeit. This bill seeks to codify two long-standing legal principals relative to forfeiture of water rights, both of which were reiterated by the Idaho Supreme Court in *Sagewillow, Inc. vs. Idaho Department of Water Resources*, and *Barnes vs. Jackson*. This amendment further codifies the requirement that forfeiture of a water right must be proved by clear and convincing evidence, and the circumstances under which a water right owner may avoid a forfeiture by resuming use of the right before a third party establishes a claim to the water. This bill identifies the circumstances to forfeiture and provides greater certainty. **Mr. Arrington** clarified the definition and standards of proof regarding clear and convincing evidence.

DISCUSSION: **Senator Stennett** and **Mr. Arrington** discussed if a water right is out of use for five years, could a third party take it over. **Mr. Arrington** clarified that basic law is after five years a water right is subject to forfeiture, though not automatic, and traditionally can change possession through several different methods. Also, other users may begin using the water that is left in the source due to nonuse. He illustrated that this bill clarifies forfeiture is not automatic due to affirmative action, and that a water right owner can resume use of the water right and avoid forfeiture altogether.

TESTIMONY: **Lynn Tominaga**, President and Co-owner at Idaho Water Policy Group, Inc., testified in support of the bill.

MOTION: **Vice Chairman Brackett** moved to send **H 615** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion passed by **voice vote**. Senator Brackett will carry the bill on the floor.

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 1:17 p.m.

Senator Heider
Chair

Erin Miller
Secretary